

Meeting with Bay Area ALJ Staff

Re:

SHD Internal Assessment and Strategic

Planning Process:

December 19, 2012, 10:00AM

I. Pre-Hearing Topic, Issues and Recommendations:

1. Issue: CWD

- a) The concern about the new draft form is that it has been designed by other than the SHD. The form should not be designed by committee. The SHD should have complete control of the form and make the final decision about its content.
- b) The draft form is overly broad, too complex, legalistic and verbose. It needs to be shorter and clearer. LEP persons and person with a limited education would have difficulty wading through and understanding the form.
- c) Counties will have to spend considerably more time explaining all the various provisions in the draft form. They currently have resource issues resulting in poor compliance actions with adopted decisions. The CWDs will only exacerbate their situation.
- d) The PUB 412 would not be an alternative to providing the claimant with all the new provisions on the draft form as the ALJ experience is that claimants do not read it.
- e) Judges are not sure that claimants fully understand that when the county fails to act on the CWD, the claimant has to initiate a request to reopen the hearing. However, the SHD should not automatically reopen cases.
- f) Upon a reopening, the ALJ should conduct the hearing on the merits of the action and claim and should not be limited to just focusing on enforcing the CWD. Enforcement alone is a waste of time.
- g) The draft CWD references that the county will continue to pay APP until the county sends out its new NOA. What should be happening is the county action relative to the CWD is a rescission of the action resulting in the claimant being returned to the aid received before the NOA was issued. If the ultimate determination is a denial, the county can recover the aid paid as an overpayment. It was noted that when APP is used, there is also a recoverable overpayment when the decision is a denial of the claim but not everyone is receiving APP. The rescission method protects claimants who file untimely but neither method protects claimants in denial actions.

2. Issue: Home Hearings:

- a) We should not put any reference as to the right to a **home hearing** on the NA Back 9.

- b) There are potential security problems with home hearings and travel alone to a home hearing is not productive time. Telephone hearings seem to work well as a reasonable alternative.
  - c) Home hearings should be set in accordance with ADA requirements.
- 3. Issue: Scheduling of hearings and calendaring ALJs.
  - a) With the present system of centralized scheduling, there are just too many mistakes.
  - b) There are too many cases set for the PM with too few in the AM.
  - c) Semi-centralized scheduling of cases/calendaring of judges results in too many or too few people showing up; ALJs being calendared to be at two different locations on the same day; and receipt of calendar assignments on weekends for the following week or at the last minute or in the middle of the night.
  - d) Cases are backlogged in Santa Clara County far too long resulting in late scheduling that puts undue pressure on judges to prepare multiple decisions over a short period of time.
  - e) IPVs are set with regular cases resulting in judges having to forgo lunch in order to keep up. IPVs should be set on separate days and on a non-queue week. This may be a scheduling problem, however.
  - f) Judges opine that centralized scheduling is not an improvement and counties agree. There are too many mistakes.
  - g) Judges want scheduling to be done by the BA office (hub). Support staff knows the nuances of scheduling cases in the region; they have done a terrific job in the past with virtually no mistakes or complaints from ALJs, counties or claimants; and the staff know county operations and constantly talks with county staff. To facilitate the return of scheduling to the BA will, however, require at least two full time support positions in the office to back up one another.
  - h) The PJ should do the calendaring of ALJs to meet regional requirements and to provide support to other regions needing assistance.

## II. Hearing Topic, Issues and Recommendations:

- 1. Issue: LA Queue:
  - a) ALJs assigned to do LA Video hearings are assigned two cases at the same time in the afternoon. These cases generally take more time and in some instances results in the assigned judge hearing the second case very late in the day or having to postpone it.
  - b) Video hearings and in person hearings are set on the same days. When video hearings are assigned in multiples, the in person ALJ are released for the day if there are no further in person hearings. They should not be released if there are claimants still in the waiting room. PJs should be monitoring ALJ caseloads and make adjustments or take actions against ALJs who consistently hear too few cases. This could also be a training issue.

## III. Post-Hearing Topic, Issues and Recommendations:

1. Issue: There were no specific comments for this section.

#### IV. Other Topic, Issues and Recommendations:

1. Issue: ALJ Survey
  - a) SHD must have complete control over the content of the survey. Stakeholders can make recommendations but they should not be able to write it.
  - b) Use of the survey as a performance tool is OK.
  - c) Survey does not need to be anonymous.
  - d) The county and the claimant/AR should complete the survey.
  - e) The survey can be used for focused training for the ALJ.
  - f) It can be used to ID general training needs.
  - g) The ALJ need not get a copy of the survey unless there is an indication of a cumulative/persistent complaint.
  - h) The survey should be handed out by the receptionist at in person and video hearings. For telephone hearings, the SHD would mail the survey to the county and claimant/AR close in time to the hearing date.
  - i) Late scheduling of a hearing should not be a factor unless the survey is completed and sent in after the decision is issued. The decision result could negatively skew the responses. Any determination of the legal sufficiency of a decision should not be evaluated by the use of a survey instrument but left to the review by the PJ or the rehearing unit.
2. Issue: Video Hearings:
  - a) The video system need to be updated to accommodate use of a telephone line for tele-interpreters and witnesses. Presently, the ALJs state they cannot do video hearings when telephones are needed.
  - b) Use of the conference call in number may be an alternative. If viable, instructions about use of a conference call line will have to be published.
  - c) Cases with SOPs/documents that exceed 150 pages should not be done by video as the transmission/copying time is excessive and burdensome.
  - d) Better notice needs to be given to claimants about video hearings in terms of what to expect and how and where to submit documents pre-hearing.
3. Issue: ALJ of the Day or Duty Judge:
  - a) They must be carefully selected in terms of their knowledge and ability.
  - b) They should be able to meet the defined expectations of a mentor.
4. Issue: Bifurcations:
  - a) Bifurcations requests are inconsistently granted or denied.
  - b) Standards need to be published to promote consistency of application. A judge submitted a guide given to counties for their use titled, "A Reasonable Policy on State Hearing Bifurcations. These guides were given to management to consider.
5. Issue: Training/Mentoring:
  - a) Using inexperienced (two years of so) ALJs as Mentors, Trainer and "ALJ of the Day" in Sacramento results in both poor training and poor decision making.

- b) Currently, training of new staff consists of an abbreviated exposure or focused training on a narrow area of the regulations and procedures done principally by judges with limited experience. This results in the new judges being faced with a sink or swim mentality.
- c) Out-stationed new judges are required to have their training in Sacramento and serve up to one year travelling there during their probationary period. There is no opportunity during this probationary period for the new judge to bond with the regional staff that judge will eventually work with.
- d) With regional office exposure, the new judge would benefit from the exposure and reliance upon senior ALJs and RAs for their further training and development.
- e) After the formalize training has been completed, in terms of succession planning, the new judge would be able to learn and benefit far more from the senior judges in the office.
- f) RAs, while they are still available, should be used as mentors and trainers of new staff. This, again, promotes succession planning.
- g) New ALJs need intense continuing training. They should be assigned a mentor in their region who can observe the new ALJ in hearings as a "Co-ALJ" providing advice during and after the hearing, reviewing and providing comment on the ALJs decisions, and doing any follow-up training as necessary, including sitting in on experienced ALJ hearings. RAs in the BA office want to do this.
- h) The SHD should publish a statewide pool of RAs, Specialists and experienced journey level ALJs who would be willing to be mentors.
- i) If any focused training must be done, it should be limited to IHSS cases.